

Illinois Housing Development Authority

EQUITY REPLACEMENT PROGRAM OVERVIEW

June 1, 2009

Overview

The Tax Credit Assistance Program (“TCAP”) and the Section 1602 Program (“Section 1602”) contained in the American Recovery and Reinvestment Act of 2009 (ARRA), provide direct benefits to low income housing projects while creating and preserving jobs, promoting economic recovery in the near term, and investing in infrastructure that will provide long-term economic benefits in Illinois.

Under TCAP, the U.S. Department of Housing and Urban Development (“HUD”) will make a grant to the Illinois Housing Development Authority (“IHDA”) to award funds to projects on a competitive basis and pursuant to IHDA’s qualified allocation plan (“QAP”). TCAP funds will be used to assist projects that received or will receive an award¹ of low income housing tax credits (“LIHTC”) under Section 42(h) of the Internal Revenue Code of 1986, as amended, (IRC) (26 U.S.C. 42) (“Section 42”), during the period from October 1, 2006 to September 30, 2009. It is expected that projects receiving an allocation of TCAP funds will have a current award of LIHTC. TCAP funds will be allocated in the same manner and subject to the same limitations (including rent, income, and use restrictions) as an allocation under Section 42.

Under Section 1602, the U.S. Treasury Department (“Treasury”) will make a grant to IHDA in lieu of, or in exchange for, LIHTC. Section 1602 funds will be used to finance the construction or acquisition and rehabilitation of qualified low-income buildings, with or without an allocation under Section 42. Allocation of Section 1602 funds will be in the same manner and subject to the same limitations (including rent, income, and use restrictions) as an allocation under Section 42.

As described following, IHDA will allocate TCAP and Section 1602 funds (“collectively, “Equity Replacement Funds”) to projects that demonstrate a financing gap (collectively, the “Equity Replacement Program”). It is expected that projects applying under IHDA’s Equity Replacement Program will have a financing gap that was created primarily as a result of reduced pricing for, or an investor’s demonstrated lack of interest in, a project’s LIHTC, but may have a financing gap as a result of other reasons.

Eligibility

Under the Equity Replacement Program, IHDA will make equity replacement funds available to projects that IHDA, in its sole discretion, has determined to be eligible. In addition, IHDA, in its sole discretion, will determine the amount and type of assistance (TCAP or Section 1602) that will be provided to the project under the Equity Replacement Program based on the following:

- Guidance received from HUD
- Guidance received from Treasury
- Guidance received from the U.S. Office of Management and Budget

¹ Projects will be considered to have an award of LIHTC when one of the following occurs: For 9% LIHTC projects, approval by IHDA’s Board will constitute an award of LIHTC. For 4% LIHTC projects, IHDA’s issuance of a determination under Section 42(m) of the Internal Revenue Code of 1986, as amended, (IRC) (26 U.S.C. 42) will constitute an award of LIHTC.

- Guidance received from IHDA’s internal and external counsel
- Fulfillment of all requirements associated with the TCAP and/or the Section 1602 funds
- IHDA’s QAP
- A competitive scoring process of applications received on a round by round basis
- A demonstrated financing gap
- Project financial feasibility
- Fulfillment of all other IHDA requirements

Projects receiving Equity Replacement Program funds may be required to meet all of the TCAP and Section 1602 requirements. These include, but are not limited to, the following (collectively the “Cross-Cutting Federal Requirements”):

- Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR Part 100 and the regulations at 24 CFR Part 107 (Equal Opportunity in Housing).
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1.
- The Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146.
- Affirmatively Furthering Fair Housing.
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8.
- National Environmental Policy Act and Related Laws (Environmental review responsibilities) and implementing regulations at 24 CFR Part 58.
- The Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992 and implementing regulations at 24 CFR Part 35.
- Davis-Bacon Prevailing Wages.
- “Anti-Lobbying” Restrictions (Restrictions on lobbying in 31 USC 1352 and implementing regulations at 24 CFR Part 87.
- The Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq., as implemented at 24 CFR Part 21.
- OMB Regulations and Circulars
 - 2 CFR Part 2424 “Non-procurement Debarment and Suspension.”

IHDA expects approximately 22.3% of the TCAP and Section 1602 funds for the State of Illinois will be allocated by the City of Chicago for projects the City of Chicago determines to be eligible for these funds.

Equity Replacement Program applications will not be accepted from projects that have been completed. Completion status will primarily be determined by construction completion; however IHDA reserves the right, in its sole discretion, to determine a project's eligibility based on other factors of completion status.

In addition, projects that received or will receive an award of 9% LIHTC under Section 42 from IHDA that are seeking Equity Replacement Program funds must be substantially similar in all respects at the time of application for Equity Replacement Program funds to the project originally approved by IHDA. Areas that will be evaluated for substantial similarity include but are not limited to: the project location; the project ownership; the development team including general contractor, property manager, development consultant, project architect, and attorney; the targeted housing population; the unit mix; the construction type; and the development and operating budgets.

Funding

Given the unique timeframes and requirements associated with the Equity Replacement Program funds, IHDA, in its sole discretion will choose how to make funds available to eligible projects. Funding may consist of a single source- meaning only TCAP funds or only Section 1602 funds, or funding may consist of a combination of TCAP, Section 1602 funds, and other funds. In addition, IHDA reserves the right to make a substitution of either resource at any time and for any reason.

Pending further guidance, IHDA reserves the right to charge fees associated with the application for, and allocation of, Equity Replacement Program funds. Projects receiving Equity Replacement Program funds will be required to pay to IHDA an asset management fee, in full at initial closing, covering the asset management services that TCAP and Section 1602 funds require. In addition, to the extent allowed under TCAP and Section 1602, IHDA will charge each project an annual compliance monitoring fee.

ARRA requires that 75% of the TCAP funds be committed no later than February 16, 2010 and that 75% of TCAP funds be expended by February 16, 2011. As a result, IHDA expects eligible projects will be awarded TCAP funds prior to the award of Section 1602 funds. In addition, projects will be required to commit to an expenditure schedule before Equity Replacement Funds are committed.

Equity Replacement Program funds are subject to recapture for non-compliance with the requirements of TCAP and Section 1602. IHDA expects to receive further guidance on the specific events that trigger recapture of the funds.

IHDA reserves the right to make changes to its standard underwriting requirements and procedures including, but not limited to, requiring additional project reserves and limiting disbursements of developer fees. In addition, IHDA reserves the right to make changes to its standard legal requirements and procedures.

Priorities

TCAP and Section 1602 funds will be made available in the following order of priority, on a round by round, first-come, first-served basis, according to eligibility and a project's readiness to proceed, until all available funds are fully committed:

1. Projects with an award of 2007 LIHTC under Section 42 from IHDA that are seeking gap financing

2. Projects with an award of 2008 LIHTC under Section 42 from IHDA that are seeking gap financing
3. Projects with an award of 2009 LIHTC under Section 42 from IHDA that are seeking gap financing
4. Projects with an award of 2008 Midwest Disaster Tax-Credits from IHDA that are seeking gap financing
5. Projects with an award of 2009 Midwest Disaster Tax-Credits from IHDA that are seeking gap financing

Application Requirements

Following is a list of application requirements for all projects seeking Equity Replacement Program funds. Any item required to be “current” must be dated or updated as of a date within six months of the application deadline.

Note: The following eight (8) items must be current and consistent with and fulfill all the requirements specified in IHDA’s QAP in the year the project was awarded LIHTC:

- Evidence of site control
- Evidence of financing commitments for all sources
- Evidence of any project based assistance
- Evidence of zoning
- A market study²
- Evidence of community support
- Certification of the project’s construction costs from a third party general contractor or architect
- Projects involving rehabilitation must submit a physical needs assessment,

In addition, the application must include:

- Evidence of a good faith effort to secure an investment in the project’s LIHTC award as evidenced by:
 - A certified narrative description of the efforts to secure an investment in the project’s LIHTC,
 - Letters of interest or denial received from tax-credit syndicators or investors,
 - A waiver allowing IHDA to contact tax-credit syndicators or investors to verify their interest in a project’s LIHTC,
- The amount of gap financing funds requested from IHDA,³

² A current letter outlining any changes in the market from the market analyst that completed the market study at the time the project was awarded LIHTC will be acceptable.

- Current documentation from LIHTC syndicators / equity providers including any current offers and previous denials,
- The current development, construction, and operating budgets, with an explanation for any changes from budgets previously submitted,
- A source by use schedule for all project costs reflecting the following:
 - Gap financing funds allocated solely to expenses that would qualify as eligible basis for the purpose of an award under Section 42,
 - Gap financing funds must be expended prior to any other financing source, to the extent possible, given the requirement of their allocation to eligible basis expenses,
- A chart detailing the unit and tenant mix including unit type, size, and income restrictions as well as the targeted population (family, elderly, special needs, etc.),
- A chart detailing the project ownership structure including all shareholders, members, etc. down to the individual(s),
- A chart detailing the development team including general contractor, property manager, real estate attorney, development consultant, etc.,
- The construction plans and specifications,
- A narrative explanation of any changes in the project subsequent to the award of LIHTC,
- A narrative explanation of how the project will comply with the Cross-Cutting Federal Requirements⁴,
- The IHDA Equity Replacement Program application,
- The IHDA environmental checklist,
- A detailed description of any non-IHDA requirements that must be fulfilled as part of the project's closing process along with an anticipated closing date,
- Supportive Living Facility projects must submit documentation from the Illinois Department of Healthcare and Family Services detailing the status of approval for participation in the Supportive Living Program as well as the operational deadline and any extensions that have been granted.

Projects that include the following in the application will garner additional points in the competitive scoring process:

- Evidence of a construction completion guarantor, with three years of financial statements for the guarantor, that proves satisfactory to IHDA,
- A valid building permit,

³ IHDA, in its sole discretion, will determine the amount and type (TCAP and / or Section 1602) of any funds to be provided.

⁴ IHDA will complete the environmental review record as required by the National Environmental Policy Act and Related Laws. The application must address compliance with all other Cross-Cutting Federal Requirements.

- A current, valid, and binding construction contract

Timeframe

IHDA will accept applications for and make allocations of the Equity Replacement Program funds utilizing a round by round schedule, based on the above project priorities, and as detailed below:

Round One

Application Acceptance Period: June 15 – July 1, 2009 at 5:00 P.M.

Eligible Projects:

- Projects with an award of 2007 or 2008 9% LIHTC under Section 42 from IHDA that are seeking gap financing
- Projects with an award of 2007 or 2008 4% LIHTC under Section 42 from IHDA that are seeking gap financing

Round Two

Application Acceptance Period: September 21 – October 5, 2009 at 5:00 P.M.

Eligible Projects:

- Projects with an award of 2008 or 2009 9% LIHTC under Section 42 from IHDA that are seeking gap financing
- Projects with an award of 2008 4% LIHTC under Section 42 from IHDA that are seeking gap financing
- Projects with an award of 2008 Midwest Disaster Tax-Credits

Other Rounds⁵

Application Acceptance Period: To be determined

Eligible Projects:

- To be determined

Disclaimer: Notwithstanding anything contained herein or in any other communication from IHDA, IHDA reserves the right, to: (a) allocate funds to any project at any time, including properties in IHDA's portfolio, without consideration to any applications that have been or may be received and without consideration of funding priority and (b) to substitute Equity Replacement Funds for other IHDA resources at any time and without consideration to funding priority.

⁵ Additional rounds may be announced pending the availability of funds as determined by IHDA.